

REMARKS

Applicants have carefully reviewed the Application in light of the Final Office Action mailed August 2, 2005. At the time of the Final Office Action, Claims 1-6, 9-16, 18-20, and 39 were pending in the Application. Applicants amend Claims 1-2, 4-6, 9-11, and 39 and cancel Claims 3, 12, and 18 without prejudice or disclaimer, and add Claims 42 and 43. Applicants' amendments, cancellations, and additions have been done to advance prosecution in this case and not to overcome prior art. Applicants respectfully request reconsideration of the pending claims and favorable action in this case.

Section 103 Rejections

The Examiner rejects Claims 1-4, 6, 11-13, 15-16, and 39 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,943,347 issued to Shepard (hereinafter "*Shepard*") in view of Liao et al. (article entitled "Adaptive recovery techniques for real-time audio streams") (hereinafter "*Liao*"). To defeat a patent under 35 U.S.C. §103(a), the claimed *combination* must be obvious. *Kimberly-Clark Corp. v. Johnson & Johnson*, 745 F.2d 1437, 223 U.S.P.Q. 603 (Fed. Cir. 1984). Therefore, it is essential to view the invention as a whole, taking each element into account as well as the advantages, properties, utilities, and results of the invention. *In re Chupp*, 816 F.2d 643, 2 U.S.P.Q.2d 1437 (Fed. Cir. 1987).

Applicants amend Claims 1-2, 4-6, and 10 to depend from allowed Claim 9. Applicants amend Claim 9 to provide antecedent basis for "the plurality of second voice samples." Thus, Applicants respectfully request reconsideration and allowance of Claims 1-2, 4-6, and 10.

Applicants amend Claim 11 to include the limitations of canceled Claim 18. The Examiner provides that Claim 18 "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." *Office Action*, p. 9. As amended, Claim 11 includes the allowable subject matter. Accordingly, Applicants respectfully request reconsideration and allowance of Claim 11 and its dependents.

Independent Claim 39 recites certain limitations that, for reasons substantially similar to those discussed with reference to independent Claim 11, are not disclosed, taught, or suggested, either expressly or inherently, by *Shepard*, *Liao*, or the combination. Therefore, Applicants respectfully request reconsideration and allowance of independent Claim 39.

Allowable Subject Matter

Applicants note with appreciation the Examiner's allowance of Claim 9. Applicants also note with appreciation the Examiner's allowance of Claim 18 and the Examiner's indication that the subject matter of this claim "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." *Office Action*, p. 9. Applicants respectfully do not agree with or acquiesce to the Examiner's comments regarding the allowable subject matter.

New Claims

Applicants add new Claims 42 and 43, which are fully supported by the specification of the present Application as originally filed. Claim 42 depends from Claim 9 and Claim 43 depends from Claim 11, both of which Applicants have shown to be allowable. Accordingly, Applicants respectfully request consideration and allowance of Claims 42 and 43.

ATTORNEY DOCKET NO.
062891.0612

PATENT APPLICATION
09/918,150

14

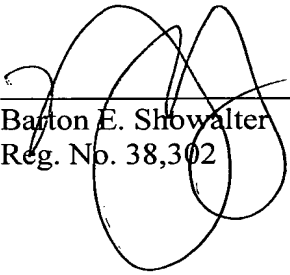
CONCLUSION

Applicants have now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicants respectfully request reconsideration and allowance of the pending claims.

Applicants believe no fee is due. However, if this is not the case, the Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicants invite the Examiner to contact its attorney, Barton E. Showalter, at (214) 953-6509.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicants



Barton E. Showalter
Reg. No. 38,302

Date: Sept. 16, 2005

Customer No. **05073**